IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1122 OF 1999
IN
SUIT NO.1044 OF 1992

Kiritkumar K. Patel,
Indian Inhabitant of Bombay,
residing at 4/B, Tulsi Bhavan,
M.G.Road, Bombay 400 086. .. Appellant
(Org.Deft.No.3.)

Vs.

State Bank of Hyderabad,
established under the Hyderabad
State Bank Act of 1950,
reconstituted under the
State Bank of Hyderabad Act No.79
of 1956 and the State Bank of
India (Subsidiary Banks) Act
No.38 of 1959 having its
head office at Gunfoundry,
Hyderabad and their Branch at
Nariman Point, Bombay - 400 021. .. Respondent
(Org.Plaintiff)

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Shri V.M.Bhardwaj, advocate, for the appellant.

Shri J.K.Hegade, advocate, for Abhyudaya Co-op.Bank Ltd.

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CORAM : R.M.S.KHANDEPARKAR &
D.G.KARNIK, JJ

DATED : 21ST APRIL, 2007

ORAL JUDGMENT: (Per R.M.S.KHANDEPARKAR, J)

1. Heard the learned advocates for the parties. The present appeal arises from the order dated 20th

March, 1997 passed in Suit No.1044 of 1992. The respondent No.1 herein had filed the suit for recovery of Rs.38,19,442.59 ps. along with interest at the rate of 22.25% per annum with quarterly rests from the date of filing of the suit till payment or realisation.

2. When the matter came up for hearing on 20th March, 1997 before the Learned Single Judge, it was found that though the defendants were served, they had not filed any written statement nor there was any explanation given for not filing the written statement. Considering the same, while allowing the advocate for the plaintiff to place on record certain documents and perusal thereof, the suit was decreed in terms of the prayer clauses (a), (b), (c), (d) and (h) of paragraph 23 of the plaint, those reliefs which have been granted read thus:-

> "(a) that the Defendants be jointly and severally ordered and decree to pay to the Plaintiffs the sum of Rs.38,19,442.59 ps. as per the particulars of claim being Exhibit "V" hereto with further interest thereon at the rate of 22.25% per

annum with quarterly rests from the date hereof till payment or realisation.

(b) that it be declared that the payment of the amount mentioned above is duly secured by a valid and subsisting mortgage by deposit of title deeds of the immovable property described in Exhibit "A" hereto.

(c) that Defendants be ordered and decreed to pay to the Plaintiffs the amount mentioned in prayer (a) above by a date that may be fixed for redemption by this Hon’ble Court and in default the said immovable property described in Ex."A" hereto be sold by and pursuant to the orders and directions of this Hon’ble Court and the net realisation be paid to the Plaintiffs towards the appropriation of the amount mentioned in prayer (a) above.

(d) that in the event of there being any deficiency liberty be granted to the Plaintiffs to apply for a personal decree against the Defendants to the extent of such deficiency.

(h) that the Defendants be ordered to pay the costs of the suit."

3. Plain reading of the impugned order discloses that the suit is sought to be disposed of purportedly under Order 8 Rule 10 of the Code of Civil Procedure. However, the order nowhere discloses that the Learned Single Judge had taken into consideration the facts stated in the plaint and as to whether in terms of the provisions of law the plaintiff was entitled to the reliefs asked for. There is no judgment delivered in terms of the provisions of law under Order 8 Rule 10 of the Code of Civil Procedure. In order to dispose of the suit in exercise of powers under Order 8 Rule 10 of the Code of Civil Procedure, the Court has to deliver a judgment, after taking into consideration the facts stated in the plaint and after ascertaining as to whether the plaintiff is entitled for the reliefs asked for on the basis of the facts stated in

the plaint. Such an exercise having not been done, the impugned order cannot be sustained and is liable to be set aside. We are fortified in taking this view by the decision of the Apex Court in **Balraj Taneja & Anr. v. Sunil Madan & Anr.,** reported in (1999) 8 SCC 396 as also by the unreported decisions of this Court in the matter of **All India Central Bank Employees Congress, a trade union & Ors. v. Central Bank of India,** delivered on 17th January, 2007 (R.M.S.Khandeparkar and Dr.D.Y.Chandrachud, JJ) in Appeal No.901 of 2006 in Suit No.3856 of 1996 and of **Municipal Corporation of Greater Mumbai & Ors. v. Azharali Anwarali Sambhalwala,** delivered on 30th March, 2007 (R.M.S.Khandeparkar and D.G.Karnik, JJ) in Appeal No.152 of 2007 in Suit No.2302 of 1992.

4. For the reasons stated above, therefore, the appeal succeeds. The impugned order dated 20th March, 1997 is hereby set aside and the matter is remanded to the Learned Single Judge to dispose of the Suit No.1044 of 1992 in accordance with the provisions of law. We make it clear that we have not expressed any opinion on any of the points on merits sought to be raised in the matter and all contentions are kept open.

5. There shall be no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(D.G.KARNIK, J)